

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3036/2010 & CM APPL 6064/2010

Reserved on: December 16, 2010

Decision on: December 24, 2010

DELHI METRO RAIL CORPORATION

LIMITED Petitioner Through: Mr. Tarun Johri, Advocate

versus

SUDHIR VOHRA Respondent-in-person.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes JUDGMENT

24.12.2010

1. The Petitioner, Delhi Metro Rail Corporation Limited (DMRC), is aggrieved by an order dated 18th March 2010 passed by the Central Information Commission (CIC) directing the DMRC to supply to the Respondent information pertaining to the cantilevered bracket of Metro Pillar No. 67.

2. The Respondent, who is an architect, made an application under the Right to Information Act, 2005 (RTI Act) requiring the DMRC to give him "all structural drawings of both the pile foundation and the superstructure, including all steel reinforcement details, foundation details, engineering calculations and soil tests", pertaining to the cantilevered bracket of Metro Pillar No. 67 which collapsed on 12 th July, 2009 resulting in the death of six persons and injury to several others. By a letter dated 7th/10th July 2009 the Central Public Information Officer (CPIO) of the DMRC declined the information sought on the ground that it was intellectual property of the DMRC and considerable cost and time had been spent

in preparing the design. The DMRC claimed exemption from disclosure under Section 8(1)(d) of the RTI Act. After the Appellate Authority concurred with the CPIO in appeal, the Respondent filed an appeal before the CIC.

3. Before the CIC, the DMRC claimed exemption from disclosure under Section 8 (1) (a), (d) and (h) of the RTI Act. The DMRC also placed before the CIC a letter dated 11th November 2009 of the Commissioner of Police stating that in relation to the accident which took place on 12 th July 2009, criminal investigations were pending, that disclosure of the requisite information may hamper the investigation and therefore, the information should be withheld under Section 8 (1)(h) of the RTI Act.

4. By the impugned order dated 18th March 2010 the CIC negated the submission of the DMRC that the information sought was exempt from disclosure under Section 8 (1)(d) since the structural design of Metro Pillar No. 67 was the intellectual property of the DMRC under the Copyright Act, 1957 (CA). The CIC referred to Section 9 of the RTI Act and held that since the DMRC was State within the meaning of Article 12 of the Constitution as well as Section 9 of the RTI Act, it cannot deny information under Section 8 (1)(d) of the RTI Act.

5. As regards the exemption claimed under Section 8 (1)(a) of the RTI Act, the CIC held that disclosure of the information pertaining to the cantilevered bracket of Pillar No. 67 could not be held to prejudicially affect the sovereignty and integrity of India or its security and strategic interests. As regards Section 8 (1)(h), the CIC noted that the Head of Crime Branch of Delhi Police had informed the CIC that the police investigation was not likely to be adversely affected by the disclosure of the information sought.

6. Mr. Tarun Johri, learned counsel appearing for the Petitioner emphasized the exemption claimed by the DMRC from disclosing information sought by the Respondent under Section 8 (1)(a) and 8 (1)(d) of the RTI Act. He did not press the point regarding Section 8 (1)(h) of the RTI Act in view of the statement given to the CIC by the Delhi Police itself that the criminal investigation will not be hampered by the disclosure.

7. Referring to Section 8 (1)(a) RTI Act, Mr. Johri submitted that the security, strategic, scientific or economic interests of the State would be adversely affected if the information including the design of the cantilevered bracket of Metro Pillar No. 67 was disclosed to the Respondent. He further submitted that the security interests would be jeopardized if such design was put in public domain although he did not deny that the said design was already available on the internet. He apprehended that it is the Respondent who might have placed the design on the internet since in any event the Respondent claimed to have a copy of the design.

8. As regards the exemption claimed under Section 8 (1)(d) of the RTI Act, Mr. Johri submitted that the said design of Pillar No. 67 is the intellectual property of the DMRC and

therefore, the CIC could not compel the DMRC to disclose such design unless the larger public interest so warranted. In response to a query by the Court and on receiving instructions, Mr. Johri stated that the DMRC considered the design to be a faulty one. The DMRC did not intend to use it in future in any construction project. He added that the DMRC has already got necessary corrections made to the design. He however submitted that the economic interests of the DMRC would be adversely affected if the failed design was asked to be disclosed.

9. Mr. Sudhir Vohra, the Respondent appearing in person, countered the submissions of Mr. Johri by pointing out that the Managing Director of the DMRC by a letter dated 31st August 2009 informed him (Mr. Vohra) that: "DMRC is aware of the deficiency in the reinforcement detailing in some of the cantilever piers. All such designs are under review. You may rest assured that DMRC will not concrete the pier arm you had noticed without rectifying the reinforcement deficiency."

10. Mr. Vohra also produced a copy of a letter written by the Managing Director on 23rd November 2009 to the Chairman, Delhi Tourism & Transportation Development Corporation Limited. This had been given to Mr. Vohra by the DMRC pursuant to an application made by him under the RTI Act. This letter stated that "the High Level Technical Committee, which enquired into the unfortunate metro accident at Pillar No. 67 site, has come to the conclusion that the accident was due to design deficiency." Mr. Vohra pointed out that disclosure of a defective design can hardly impact on the security, strategic, scientific or economic interests of the State. He stated that he bonafide required the information for academic purposes as it was important to study the reasons for the failure of the design and to ensure that such defective design is not used by the DMRC in future. His effort was in larger public interest because the use of defective design might impact on the life of the several people using the metro. He submitted that the larger public interest requires the DMRC to share the details of the defective design of Pillar No. 67 and in particular the design of the cantilevered bracket, the failure of which led to the accident. He denied having placed the information including the design on the internet. He pointed out that he had merely drawn attention to the fact that the information was already in the public domain since it was on the internet. He now only needed a confirmation from the DMRC that what was available on the net was correct.

11. The above submissions have been considered.

12. The exemption from disclosure sought by the DMRC, with reference to Section 8 (1)(d) of the RTI Act on the ground that it holds the copyright in the design of the Pillar No. 67, is based on an incorrect reading of the said provision. Section 8 (1)(d) of the RTI Act reads as under: "8. Exemption from disclosure of information.---(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,----

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(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information."

13. What the above provision implies is that if information available with the DMRC which constitutes intellectual property is sought to be disclosed, and such disclosure "would harm the competitive position of a third party", then such information need not be disclosed unless the disclosure is in larger public interest. Disclosure of the information, including the design of the cantilevered bracket of Pillar No. 67 in which the DMRC holds the copyright, cannot possibly affect the competitive position of any third party. That is not even the case of the DMRC. Section 8(1)(d) RTI Act is not attracted in the instant case. DMRC cannot, therefore, possibly seek to rely upon that provision to deny the Respondent information concerning the defective design of the cantilevered bracket of Pillar No. 67.

14. The Respondent has repeatedly stressed that he is only a professional architect. He does not propose to use the design, which in any event has been acknowledged by the DMRC to be defective. He seeks information for academic purposes and for his study and analysis of the failed design. This seeking of information about a design, the copyright in which is with the DMRC, under the RTI Act, is independent of the rights of DMRC to enforce its copyright in the said design. This is underscored by Section 9 of the RTI Act which reads as under:

"9. Grounds for rejection to access in certain cases- Without prejudice to the provisions of Section 8, a Central Public Information Officer or State Public Information officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State."

15. It is not disputed by learned counsel for the Petitioner that the DMRC is, for the purposes of Section 9 RTI Act State; as much as it is within the meaning of Article 12 of the Constitution. It is, however, submitted that there was a discretion under Section 9 RTI Act to reject the request for information involving a copyright, and therefore, even where the information pertained to copyright vesting in the State, (in this case the DMRC), there was a discretion in the CPIO to refuse such request.

16. This Court is unable to accept the above submission. Clearly the words other than the State at the end of Section 9 RTI Act reflect the legislative intent that the exemption from disclosure is available only where such disclosure involves infringement of a copyright subsisting in a person other than the State. There is no discretion to refuse when it comes to disclosure of information pertaining to a copyright subsisting in the State. The DMRC

cannot refuse the information sought even if it might involve infringement of its copyright in the design pertaining to the cantilevered bracket of Metro Pillar No. 67.

17. It must be clarified that whatever copyright the DMRC has in the design in question, it can, in terms of the law governing copyright in this country, seek to protect such right in the manner known to law. Consequently, if any other person chooses to exploit the copyright of the DMRC, without its permission, the DMRC can certainly institute proceedings against such person for infringement in accordance with law.

18. This Court concurs with the view expressed by the CIC in the present case that the DMRC cannot possibly claim exemption from disclosure of information sought by the Respondent with reference to Section 8 (1)(d) of the RTI Act.

19. As regards the exemption claimed with reference to Section 8 (1)(a), this Court finds that the design in question has been acknowledged by DMRC itself to be a failed one. The DMRC has said that it will not use the said design in its projects hereafter. The information and the details of the design are already on the internet and, therefore, in the public domain. In the circumstances, the disclosure of such design can hardly be said to prejudicially affect the security, strategic, scientific or economic interests of the DMRC.

20. Consequently, this Court finds no ground having been made out by the DMRC for interfering with the impugned order passed by the CIC.

21. The writ petition and the pending application are dismissed S. MURALIDHAR, J

DECEMBER 24, 2010

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